IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10421 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LUBI ELECTRICALS LTD.

Versus

RAMESH RAJESHWAR

Appearance:

MR KM PATEL for Petitioner Nos. 1-3

MR MUKUL SINHA for Respondent Nos. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/06/2003

ORAL JUDGEMENT

Rule. Dr.Mukul Sinha waives service of rule on behalf of the respondents.

With the consent of the parties, the matter is

taken up for hearing today.

By fling this petition, the petitioners have challenged the order passed by the Labour Court, Ahmedabad, dated 30th April, 2002, by which the Labour Court has decided to decide preliminary issues at the time of deciding the main application. Being aggrieved by the said order, the petitioners have approached this Court by way of this petition under Article 227 of the Constitution of India.

Mr.K.M. Patel, learned Advocate for the petitioners, submitted that the Labour Court should have decided the preliminary issue first and it is an error committed by the Labour Court, by which the Labour Court has held that all the preliminary issues will be decided along with the main proceedings and at the final stage. It is submitted by Mr.Patel that the recovery application filed by the respondents is not maintainable, as, the same is filed by way of a single application on behalf of about 800 workmen and the same is also filed through three workmen (through Union). It is also submitted that unless there is a proper authorisation in favour of such persons, who are moving the Court by way of recovery application, such recovery application is not maintainable. It is submitted that, therefore, this point was required to be decided first by the Labour Court before proceeding with the main matter. Mr.Patel also further submitted that, ultimately, if it is found that for want of proper authorisation the recovery application is not maintainable, then, in that case, the employer may not be required to lead evidence on merits as regards about 800 employees, on whose behalf the recovery application is filed. Under these circumstances, he submitted that this question is, therefore, required to be decided as a preliminary point so that the Management may not have to lead evidence in case that point is decided in its favour.

Mr.Patel also further submitted that the present respondents had initially filed Special Civil Application No.7814 of 1998, wherein there was a prayer against the present petitioners, to the effect that they may be directed to pay minimum wages. That writ petition was rejected by a learned single Judge on the ground that alternative remedy is available and that, in any case, the same is also availed of by the respondents herein. Against the order of the learned single Judge, at the instance of the present respondents, Letters Patent Appeal No.256 of 1999 is filed and the same is pending. Mr.Patel, therefore, submitted that when the aforesaid

matter is sub judice before the letters patent court, this recovery application is not maintainable. Mr.Patel also further submitted that a joint application against three petitioners herein is not maintainable before the Labour Court. According to Mr.Patel, there should have been independent applications, as a single application against all the three employers is not maintainable. It is also submitted by Mr.Patel that, in any case, in view of the remedy available under Section 20 of the Minimum Wages Act, recovery proceedings are not maintainable under Section 33-C of the Industrial Disputes Act.

Mr.Sinha, who is appearing for the respondents, submitted that this petition is not maintainable as the same is at an interlocutory stage. Mr.Sinha also further submitted that the Labour Court has not given any finding on any of the issues involved in this petition and it is merely observed that all these preliminary issues will be examined at the time of deciding the main application. Mr.Sinha submitted that this petition is filed with an object to delay the proceedings pending before the Labour Court. It is submitted that it is open for the present petitioners to raise all these contentions as the Labour Court has not decided any point and, therefore, this Court should not exercise its extraordinary jurisdiction under Article 226 / 227 of the Constitution of India when the matter is at large before the Labour Court. Mr.Sinha, however, submitted that he has no objection if the Labour Court is directed to decide whether there is any authorisation given by the concerned employees in favour of the present respondents or in favour of the Union for filing and prosecuting the recovery application in question. For that purpose, Mr.Sinha also states that he has no objection if the Labour Court is directed to examine this question first before proceeding with the main application. Mr.Sinha also further submitted that the present recovery application may be treated to have been filed only against the petitioner No.1, i.e. Lubi Electricals Ltd., and he concedes that the respondents herein are required to file separate applications against each one of the employers and, therefore, the present application before the Labour Court may be treated to have been filed against petitioner No.1, i.e. Lubi Electricals Ltd., and that recovery application should be restricted qua the employees of the aforesaid organisation. Mr.Sinha also further states that so far as other two employers are concerned, viz., A.P. Motors Limited, and Lubi Submersible Limited, the concerned employees will file separate applications against the aforesaid two employers, and he also submitted that, for that purpose, he will submit necessary amendment

application before the Labour Court in the pending recovery proceedings.

So far as the question regarding non-maintainability of the recovery application in view of the filing of the LPA by the respondents is concerned, I do not find any substance in the said argument. Originally, the respondents came to this Court with a prayer that the concerned employers may be directed to pay minimum wages and a learned single Judge rejected the said Special Civil Application on the ground of availability of alternative remedy. It may be true that the present petitioners have approached the letters patent Bench by filing Letters Patent Appeal No.256 of 1999, but, it cannot be said that they have no right to prosecute the statutory remedy available under the Industrial Disputes Act by way of recovery proceedings. Simply because they have preferred Letters Patent Appeal can never be treated as a ground if otherwise they are entitled to move the Labour Court under Section 33C of the Industrial Disputes Act. The said contention of Mr.Patel is thoroughly misconceived and the Labour Court is entitled to proceed with the said application, on merits.

So far as the contention of Mr.Patel regarding maintainability of the recovery proceedings in view of Section 20 of the Minimum Wages Act is concerned, the said contention can be examined by the Labour Court at the time of deciding the main proceedings. The said question be decided by the Labour Court in accordance with law at the time of deciding the main application. The Labour Court has not concluded that point and that point is still kept pending. At this stage, Mr.Sinha also submitted that so far as the reference about the Special Civil Application is concerned, the same was filed for getting minimum wages for a different period altogether. However, it is not necessary for me to examine this point, as, it is, ultimately, for the Labour Court to examine this question, as indicated above, at the time of deciding the main proceedings.

At this stage, Mr.Sinha submitted that even if there is a formal defect in the application in connection with giving appropriate names of concerned employees or workmen, the respondents are going to move appropriate amendment application before the Labour Court. However, it is not for this Court to examine the said point. As and when appropriate application is moved before the concerned Court, it is for the said court to decide the same in accordance with law.

The Labour Court is, accordingly, directed to decide first as a preliminary point whether a single application, at the instance of about 800 workmen, filed by three workmen, is maintainable and whether there is any proper authorisation in favour of the Union or in favour of the concerned respondents, by which the respondents are authorised to file and continue to proceed with the present proceedings. The aforesaid questions may be decided first before proceeding with the matter, on merits. The respondents herein are permitted to file appropriate amendment applications for the purpose of restricting the present recovery application qua only one employer, i.e. Lubi Electricals Ltd., reserving their right to file separate applications against A.P. Motors Limited, and Lubi Submersible Limited.

It will be open for the respondents herein thereafter to request the Court to take all these matters together. However, it is for the Court to decide the said application in accordance with law in case such prayer is made.

The Labour Court is accordingly directed to decide the preliminary point, as indicated above, and rest of the questions are not required to be decided as preliminary points and all other questions are required to be decided along with the main proceedings. At this stage, the Labour Court may decide the point about authorisation as well as the point whether such application by three persons or by the Union on behalf of about 800 employees is maintainable by taking them first as preliminary points. It will be open for the Labour Court to examine whether there is an authorisation available on the record. It is once again stated that so far as the argument of Mr.Patel to the effect that in view of the pendency of the Letters Patent Appeal, the application under Section 33C of the Industrial Disputes Act is not maintainable, is rejected and the said point canvased by Mr.Patel shall stand concluded by this order.

The petition is accordingly partly allowed to the aforesaid extent. Rule is made absolute accordingly. No costs.

The Labour Court is directed to expedite the proceedings and may dispose of the proceedings as early as possible, preferably within a period of six months from today.

Writ to be sent forthwith.

19th June, 2003 (P.B. Majmudar, J.)

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(apj)